



IN THE PATENT AND TM OFFICE

Appn. Number: 09/396,128
Filing Date: 09/14/99
Appn. Title: Hurricane-Earthquake Frieze Plate

Art Unit: 3637
Applicant: Thompson, Thomas C.
Examiner: Tran, Hanh V.
Mailed August 17, 2004

Petition to Revive under 37 CFR 1.137(b), Unintentional Delay

Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22202

Sir:

In response to the Denied Petition to Withdraw the Holding of Abandonment mailed 06/02/04, I have included in this response the following:

1. Petition to Revive under 37 CFR 1.137(b), Unintentional Delay.
2. Check for \$1,330.
3. Request to refund the \$1,330, because the Letter of Informality, indicating excess claims and payment of a fee, was in error.
4. Response showing that the applicant's response, mailed 10/26/02, should have been entered; that there were no excess claims, and that the 11/21/02 Letter of informality should never have been sent.
5. Certificate of Mailing.

Very respectfully,

Thomas C. Thompson
Thomas C. Thompson

Certificate of mailing:

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on Aug 17, 2004 (Date)

Printed name of person signing this certificate: Thomas C. Thompson

Signature: *Thomas C. Thompson*

08/24/2004 HGUTEMAI 00000016 09396128

01 FC:1453

1330.00 OP

Adjustment date: 09/22/2004 AKELLEY
08/24/2004 HGUTEMAI 00000016 09396128 -1330.00 OP
01 FC:1453
09/22/2004 AKELLEY 00000011 09396128 665.00 OP
01 FC:2453
Refund Ref: 09/22/2004 AKELLEY 0000138947
CHECK Refund Total: \$665.00

RESPONSE

1. The applicant respectfully requests that the Petitions Office revive abandoned application number 09/396,128 under 37 CFR 1.137(b), Unintentional delay.
2. The applicant is enclosing a check for \$1,330, as stated in the decision.
3. The applicant respectfully requests that the Patent Office refund the unintentional delay fee of \$1,330.
4. The applicant's response, mailed 10/26/02, should have been entered when received by the USPTO. The 11/21/02 Letter of Informality from the USPTO should never have been sent, since there are no excess claims.

The Office Action, mailed 06/26/02, states in the Office Action Summary that claims 12-31 (20 claims) are pending. It also states that claims 12-31 are rejected.

In the Detailed Action of the above OA, the examiner states "Please note that claims 1-19 were pending. In the request for CPA, applicant requested to cancel claims 1-11, and add claims 12-31. It appears that applicant's intent is to cancel claims 1-19 and then add new claims 12-31. Therefore, for the purpose of this examination, new claims 12-31 have been renumbered under rule 126 as 20-39, respectively. Clarification is required."

In the applicant's 10/26/02 response, the cover page states the following "Request to renumber claims according to examiner's citation." The applicant agrees that the pending claims, 12-31, be renumbered as claims 20-39, or 20 claims.

In the applicant's 10/26/02 response, paragraph number 2 states the following "The applicant respectfully requests that the examiner renumber the claims according to examiner's citation. The newly numbered claims are on the clean copy of the claims, but

the applicant has used the old claim numbers on the amended claims to answer the examiner's rejections." The applicant is agreeing to the renumbering of pending claims 12-31 as 20-39. That is 20 claims. If old claims 1-19, from before the CPA, are not pending, and the applicant has canceled claims 1-11, and the examiner assumes that claims 12-19 were meant to be canceled, and the applicant agrees with the examiner's citation, then the applicant assumes that old claims 1-19 are canceled.

The clean copy of the applicant's claims, shows that claims 1-19 are not listed, since the applicant has agreed with the examiner's statement of the applicant's intention of canceling old claims 12-19. In the newly revised method of amending claims, 1-19 would be shown as canceled, which would have cleared up this misunderstanding.

If the applicant's 10/26/02 response had specifically requested canceling claims 12-19, then pending claims 12-19 may have been canceled. Or renumbered claims 20-27 may have been canceled. To avoid such confusion, the applicant agreed with the examiner's citation to renumber the pending claims, starting from the canceled claims.

The examiner had 20 claims pending, and the applicant agreed that 20 claims were being responded to and amended. The applicant's marked-up copy of the claims, and the clean copy of the claims indicates that only 20 claims are active. Therefore, the 11/21/02 Letter of Informality, indicating a \$114 fee for excess claims was in error. A clerk appears to have miscounted the number of claims, while the examiner and applicant counted 20 claims. If the applicant had not agreed with the examiner about the 20 pending claims, then the applicant would have sent in a check for excess claims.

As indicated on a previous response, the applicant was out of the country when the 11/21/02 letter was mailed. Since Office Actions have a three-month response, the applicant did not expect any USPTO correspondence that would require a one-month response. Especially a letter that was in error. The applicant's neighbor had mailed the

Letter of Informality to the applicant in the Philippines. The applicant could not mail a check in time, and could not find a fax machine. The applicant sent an e-mail to his brother in Colorado, so he could forward the applicant's response to try and explain that there were no excess claims. Since the applicant and examiner agree that only 20 claims are pending, no fees or letters about fees should have been mailed to the applicant. The applicant should not be punished for trying to indicate to the USPTO that one of their letters was in error. The applicant's response, mailed 10/26/02, should have been entered when received by the USPTO since there were only 20 claims that were present and active. Therefore the abandonment fee of \$1,330 should be refunded back to the applicant.

Very Respectfully,

A handwritten signature in cursive script that reads "Thomas C. Thompson".

Thomas C. Thompson

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